

Tax Bulletin

Missouri Department of Revenue
Volume 10, No. 2

Summer 2001

Directly Speaking . . .



As you have probably heard by now, the state of Missouri is experiencing a budget shortfall. The shortfall is attributable to a variety of factors, including the downturn of the economy. Although state revenues are up over last year, they do not meet budget projections, which were based on a more prosperous economy. As a result, the Office of Budget and Planning is withholding an additional 15 percent of state departments' general revenue funding for fiscal year 2002.

Undoubtedly, the withholdings will impact the Missouri Department of Revenue and the processing of income tax returns next year. The budget situation may not allow us to hire temporary employees; therefore, the processing of income tax returns may take longer than usual. In light of the budget situation, **I encourage you to plan to file tax returns electronically, if at all possible.**

On another note . . . most Missourians will be receiving a federal tax rebate in the next few months as part of the federal tax bill that was recently signed by President Bush. The federal tax rebate amount will be up to \$300 for an individual and \$600 for couples filing a joint return. In recent weeks, the state of Missouri's tax treatment of the federal tax rebate has been the subject of much discussion.

Missouri is one of only nine states that allows taxpayers the benefit of a federal income tax deduction on the state income tax return. This means Missourians may subtract their federal income tax (up to a maximum deduction of \$5,000 for an individual and \$10,000 for couples filing jointly) on their Missouri state income tax returns (Section 143.171, RSMo). The federal rebate is a reduction in the federal tax that Missourians will pay for 2001. Consequently, the federal income tax deduction for Missourians receiving the rebate may also be reduced.

For an individual who receives the full \$300 federal tax rebate, the maximum state income tax impact of the rebate may be an increase in Missouri income tax of \$18 on a taxpayer's 2001 state income tax return. For a couple filing jointly who receives the full \$600 federal tax rebate, the maximum state income tax impact may be an increase in Missouri income tax of \$36 on the 2001 state income tax return.

Governor Bob Holden has announced that he will ask the General Assembly during its September special session to approve a one-time change in state tax law to exempt the federal rebate from taxation and ensure Missourians receive the full benefit of the rebate.

I hope you find this edition of the *Tax Bulletin* helpful. If you have questions or comments, please contact me or my staff.

Sincerely,

Carol Russell Fischer

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Online Services Continue to Grow

by Kay Dinolfo, Director, Electronic Communications, (573) 751-3100

The Missouri Department of Revenue has a new, improved, and easy-to-use cyberface on the web at **www.dor.state.mo.us**! New services and a completely revamped web site mean that businesses and individuals will find it even easier to do business and find information from and about the Division of Taxation and Collection.

To begin with, tax professionals will find a web site designed with their needs in mind. From the main department home page, tax professionals will find their page just a click away. The page includes links to forms, information, letter rulings, case summaries, and other information of particular interest to the tax professional. You can even find an online version of this newsletter on the department's web site.

For small businesses or tax departments of larger businesses, the Business Tax section of the web site provides tax registration, withholding tax, sales tax, and other forms to suit the needs of Missouri businesses. You will also find e-mail links to the various areas of the Division of Taxation and Collection that you would normally need to contact, including the corporation income tax unit, the sales and use tax unit, and the business tax registration (or registration change) unit.

The new Tax Information page (**www.dor.state.mo.us/tax/inform.htm**) includes a variety of information useful for many types of taxpayers. For example, here you can find a complete tax calendar that helps you keep track of various tax filing deadlines. You will also find current interest rates, informational bulletins on various issues, and links to other sites that relate to state taxation.

A new feature on the web site is a page of Taxation Special Notices. These notices provide a quick glance at recent policy changes from the department's Tax Policy Group. You can find the Special Notices at:

www.dor.state.mo.us/tax/specnote.htm Or, you may follow the link from the Taxation Division's home page.

Sales and use taxpayers are now able to file and pay their obligations online. You can find the link to NationTax, a filing service, from the Division of Taxation's home page. This service is a great new convenience for all businesses that pay sales and use tax.

Many of you are already familiar with the e-mail subscription services that the department now offers. If not, easy sign up is available on the web site, so that you can receive news about the latest developments in either sales tax or income tax regulations, or about tax deadlines. To read more about these subscription services, and to sign up, check

www.dor.state.mo.us/tax/pros/listserv.htm

One thing you can say for certain about the web — it is always changing! Check the web site often for changes and bulletins. And if you ever have any suggestions, we would like to hear them. Please e-mail us at:

dormail@mail.dor.state.mo.us

E-MAIL ADDRESSES

Can't find the information you need? Get fast answers to your questions by e-mail.

Corporation Income Tax:

corporate@mail.dor.state.mo.us

Franchise Tax:

franchise@mail.dor.state.mo.us

Business Registration (or registration changes):

businesstaxregister@mail.dor.state.mo.us

Sales and Use Tax:

salesuse@mail.dor.state.mo.us

Excise Taxes: excise@mail.dor.state.mo.us

Personal Income Taxes:

income@mail.dor.state.mo.us



Missouri Department of Revenue

Bob Holden Governor; **Carol Russell Fischer**, Director of Revenue; **Stan Farmer**, Director, Division of Taxation and Collection

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New for Fiscal Year 2002!

by Anita Buddemeyer, (573) 751-2836

This fiscal year will mark another "first" for the Missouri Department of Revenue! First came WEBFile and then Sales Tax Online Filing. Now we are proud to introduce online registration.

What is online registration? Online registration is the result of a joint effort by the Missouri Department of Revenue and the Department of Industrial Labor

and Relations, Division of Employment Security, in order to SIMPLIFY the registration process when starting a new business in the state of Missouri.

A taxpayer will be able to register its businesses online for retail sales tax, consumer's use tax, vendor's use tax, corporate/franchise tax, withholding tax and state unemployment tax. The new Internet application

will also offer links to obtain registration information from the Missouri Secretary of State, the Missouri Division of Liquor Control and the Internal Revenue Service.

Online registration will be available in the near future. Come see the new registration method at the department's web site www.dor.state.mo.us, click on "Online Services."

Does Your Client Want a Quick Income Tax Refund?

Are you interested in ensuring your client gets the quickest refund possible? Most tax practitioners are! Check this out.

In Directly Speaking, Director Fischer noted that the processing of income tax returns may be impacted by budget cuts. That impact could extend to you and your clients if you file paper returns. Because people must handle paper returns before a refund can be issued, reduced staffing due to budget constraints means much slower processing of paper returns.

How do you avoid these possible delays? Electronic filing! With electronic filing people are not required to type the return information into the computer, therefore, budget reductions will not slow processing of electronically filed returns. Electronic filing also saves mail time. There is no need for your client to wait by the mailbox for a refund check. With electronic filing, the refund can be deposited directly into a bank account. Additionally, electronic returns have a much lower error rate,

meaning fewer electronic returns are subject to a second review to correct errors detected by our processing system. Fewer than 8 percent of the returns filed electronically in 2001 required a second error review compared to 20 percent on traditional paper filings.

It is not too late to help your clients get a quick refund. Page 4 provides details and seminar dates for enrollment. Remember, electronic filing is fast and easy.

Tax Policy Notice — Historic Preservation Credit

The Missouri Department of Revenue is issuing this tax policy notice in an effort to clarify when a Historic Preservation Credit can be carried back to tax years before the property was placed in service.

Taxpayers claiming the Historic Preservation Credit on or after January 1, 2002 will be

required to file their income tax return for the year the rehabilitated property is placed in service BEFORE carrying the credit back to prior years.

The carryback provision for the Historic Preservation Credit is found in subsection 1 of Section 253.557.1, RSMo, which states "If the amount of such

credit exceeds the total tax liability for the year in which the rehabilitated property is placed in service, the amount that exceeds the state tax liability may be carried back to any of the three preceding years . . ."

This section establishes a condition on the carryback. The

Continued on page 10

Missouri DOR to Participate in IRS E-File Seminars

by Jerry Wingate, Tax Program Coordinator, (573) 522-4300

Electronic filing of income tax has become a popular filing option among Missouri taxpayers. The 2001 filing season showed a 27 percent increase over the previous year, with over 700,000 returns filed. To encourage tax preparers to file their clients' returns electronically, the IRS is hosting a series of e-file seminars throughout the state beginning early in the fall. Prospective Electronic Return Originators (EROs) will be given an overview of how electronic filing works and are able to enroll as an ERO at the seminars. Representatives from Missouri will also be on hand to provide information about Missouri's e-file program and to answer questions or address concerns. In addition, the Kansas City area will host a two-day seminar with both Missouri and Kansas represented. All tax preparers, including current EROs, are encouraged to attend to receive the latest updates on tax law changes, program enhancements and last minute changes to the

program. The seminars are scheduled as follows:

- September 10—St. Charles Community College, St. Charles, MO
- September 13—Harris Stowe State College, St. Louis, MO
- September 19—Glenstone Library, Springfield, MO
- September 26–27—Johnson County Community College, Overland Park, Kansas (Joint seminar with Kansas).

For more information or to register, call the IRS at (314) 612-4530, or send an e-mail to **etaksmo@hotmail.com**. To register by fax, send your name, company, address, and telephone number to (314) 612-4700 or mail to Internal Revenue Service, ETA, Mail Stop 1021 STL, P.O. Box 66776 St. Louis, MO 63166. For more information on Missouri's e-file program, call (573) 751-3930, or send an e-mail to **elecfile@mail.dor.state.mo.us**.

Income Tax Regulations

by Lesa Morrow, Administrator, (573) 751-2578

To continue efforts to reduce compliance costs while increasing voluntary compliance and customer satisfaction, the department has formed a team to review individual income tax regulations. This team, similar to the sales/use tax regulation team (SURG), will be reviewing existing regulations as well as promulgating new ones with the goal of providing the most needed, user friendly information. The regulations have not been updated for several years and many current individual income tax issues are not addressed by regulation. Updated, accurate regulations will not only assist practitioners and self-preparers when researching individual

income tax issues, but they will also provide department employees with a valuable informational tool, ensuring that our customers are given the correct answer every time.

The team welcomes suggestions for topics that should be addressed by regulation.

Those suggestions may be e-mailed to **Lesla_Morrow@mail.dor.state.mo.us**.

Practitioners and others interested in reviewing draft regulations may subscribe to the department's e-mail list service at **www.dor.state.mo.us/tax/pros/listserv.htm**

Practitioner's Pointer: Tax Credit Carryback

by Wood Miller, (573) 751-2633

The New Generation Cooperative Incentive (NGCI) tax credit is provided for in Section 348.432, RSMo, 2000. Specifically Subsection 3 of Section 348.432, RSMo, provides, "any member who invests cash funds in an eligible new generation cooperative may receive a credit against the tax otherwise due pursuant to Chapter 143, RSMo, other than taxes withheld pursuant to Sections 143.191 to 143.265, RSMo, . . . in an amount equal to the lesser of fifty percent of such member's investment or fifteen thousand dollars."

The NGCI credit can, of course, be claimed on the individual's 2000 Missouri income tax return. Subsection 3 expressly provides the individual "may receive a credit against the tax otherwise due pursuant to Chapter 143, RSMo." Thus, section 348.432, RSMo, recognizes the provisions of Chapter 143 control.

Furthermore, subsection 4 provides in pertinent part, "[a]ny amount of credit that exceeds the tax due for a member's taxable year may be carried back to any of the member's three prior taxable years and carried forward to any of the member's five subsequent taxable years." Thus, an individual who qualifies for an NGCI tax credit may benefit by claiming such on a previous year's return and receive a refund of income tax previously paid.

An individual who has the NGCI credit that exceeds his income tax liability for 2000 may carry the unused credit back. The question to be determined is to which taxable year(s) the NGCI credit may be carried back.

Statutory terms are considered in their plain or ordinary and usual sense. First, Subsection 4 uses the word "may" to describe the carryback provision. This clearly connotes a matter of discretion is involved; the carryback is not mandatory. Next, Subsection 3 expressly provides the NGCI credit is against the tax otherwise due pursuant to Chapter 143. The terms of Chapter 143 apply and control. There is no provision in Section 348.432, RSMo, 2000, which overrules or makes any exception to the provisions of Chapter 143. Finally, there is no provision in Section 348.432 which makes exception to the general provision of statute of limitations from claiming a refund contained in Section

143.801.1, RSMo 2000.

The NGCI credit for 2000 may be carried back to 1997 if the provisions of Chapter 143 permit. An income tax return for calendar year 1997 was due on or before April 15, 1998. Section 143.801, RSMo, provides a claim for return may be made any time on or before April 15, 2001. It is important to understand the difference between the year of the NGCI credit and the year to which the carryback is applied. Each of these two years has its own statute of limitations provisions. One must be careful to apply the appropriate limitation to each particular year.

If the individual filed his original 1997 Missouri income tax return on or before April 15, 1998, then the time for filing an amended 1997 return expires on April 15, 2001. Thus, an amended 1997 return that is filed in July 2001 is beyond the statute of limitations. No refund can be issued for such return. The credit may be available to carryback to the 1998 or 1999 return.

Please note the facts in each individual's situation are important. If an individual had a valid extension of time to file his 1997 Missouri individual income tax return such that his original 1997 income tax return was not due to be filed until August 15, 1998, and that individual actually filed his 1997 income tax return on August 15, 1998, then that individual would have until August 15, 2001, to file an amended 1997 income tax return. Section 143.801.1, RSMo, 2000, provides the claim for refund shall be filed within three years from the time the return was filed. Each individual's facts and circumstances must be reviewed carefully.

Therefore, even though Section 348.432, RSMo, 2000, provides a carryback of three years for the NGCI credit, such provision must comply with the statute of limitations provided in Section 143.801.1, RSMo, 2000, for filing amended returns to claim a refund. As a practitioner you can aid your client(s) by tracking the relevant statute of limitations.

SIMPLIFY

Letter Rulings

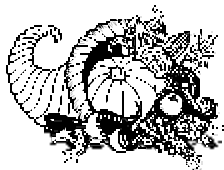
by General Counsel's Office, (573) 751-2633

The following is a list of the letter rulings issued during the period of March 14, 2001 to July 5, 2001.

LETTER#	DESCRIPTION
2650	Manufacturing — Replacement Machinery, Equipment and Parts
2703	Cable Television and Internet Equipment
2717	Resale Exemption Certificates — Out of State Company
2749	Custom Artwork
2774	Internet Sales — Nexus
2775	Computer Software License Fees
2785	Ticket Sales by Offsite Vendors
2793	Restaurant Equipment and Supplies
2804	Prepaid Telephone Cards
2808	Ticket Sales by Offsite Vendors
2816	Exemption Certificate — Sales from Out of State
2830	Sales for Resale
2832	Aircraft Sales and Financing Agreements
2833	Project Exemption Certificate
2842	Catalogs Mailed from Outside the State
2848	Catalogs Shipped in State for Addressing
2849	Telephone and Internet Sales — Nexus for Corporate Income
2850	Food Supplements
2868	Logging Machinery
2873	Banding Materials for Packing
2881	Printing and Lettershop Services
2900	Prosthetic Devices — Skin Compression Burn Sheaths
2906	Fitness Center Tanning and Initial Training Fees
2907	Food Supplements
2917	Food and Related Products
2934	Even Pricing System — Concession Sales
2935	Fitness Center Membership Dues



Copies of the sanitized version of these letter rulings are available at a cost of \$1.10 plus sales tax of 6.225% each by writing to the Department of Revenue, General Counsel's Office, P.O. Box 475, Jefferson City, MO 65105-0475. Copies may also be obtained at no cost from the department's web page www.dor.state.mo.us



State Holidays

State offices will be closed in observance of the following holidays.

October 8	Columbus Day
November 12	Veteran's Day
November 22	Thanksgiving Day
December 25	Christmas Day



COURT CASES

by General Counsel's Office, (573) 751-2633

SALES TAX

Robert K. Gabel v. Riley Enterprises, d/b/a Charlie's Lodge v. Director of Revenue, Case No. 99-3062RV (AHC, 1/9/2001)

Riley Enterprises (Taxpayer) purchased a business that had an outstanding sales tax liability. When Taxpayer purchased the business, it failed to withhold a sufficient amount of the purchase price to cover the amount of unpaid taxes owed to the department. Taxpayer was assessed under the successorship liability statute found in Section 144.150, RSMo. Taxpayer appealed the assessment but did not appear at the hearing. The Administrative Hearing Commission upheld the department's assessment.



INCOME TAX

Director of Revenue of Missouri v. CoBank, ACB, No. 99-1 792 (U.S. Supreme Court, 2/20/2001).

The Farm Credit Act of 1933 created various lending institutions within the Farm Credit System to meet the specific credit needs of farmers. Among these institutions were banks for cooperatives, one in each of 12 farm credit districts, and a Central Bank for Cooperatives. These banks are designed to make loans to cooperative associations engaged in marketing farm products, purchasing supplies or furnishing farm services. The Farm Credit System includes banks for cooperatives,

production credit associations, farm credit banks and federal land bank associations. By statute each of these institutions is designated as a "federally chartered instrumentality of the United States."

CoBank, ACB (Taxpayer) is the successor to all rights and obligations of the National Bank for Cooperatives, which had been formed in 1989 through the consolidation of 10 district banks for cooperatives and the Central Bank for Cooperatives. The National Bank for Cooperatives filed Missouri corporate income tax returns for the years 1991 through 1994 and paid the taxes shown on those returns. In March 1996, Taxpayer filed amended returns on behalf of the National Bank for Cooperatives, requesting an exemption from all state income taxes and refunds of the taxes paid for 1991 through 1994.

Taxpayer relied on the doctrine of implied tax immunity that originated in *McCulloch v. Maryland*, 4 Wheat. 316 (1819), and it asserted that the Supremacy Clause of the Constitution accords federal instrumentalities immunity from state taxation unless Congress has expressly waived this immunity. The Missouri Supreme Court held that banks for cooperatives are exempt from state income taxation because the current version of the Farm Credit Act is silent as to such institutions' immunity from state taxation. The New Mexico Court of Appeals and the Indiana Supreme Court each reached the

opposite conclusion with respect to state taxation of production credit associations. Certiorari was granted to resolve this conflict.

Congress did expressly designate banks for cooperatives as "instrumentalities of the United States." The Court has ruled that an instrumentality is entitled to implied tax immunity only when it is so closely connected to the Government that the two cannot realistically be viewed as separate entities. The Court did not address the implied immunity questions because Congress has provided that banks for cooperatives are subject to state taxation. The Court concluded nothing in the statute indicates a repeal of the previous express approval of state taxation, and the structure of the Farm Credit Act indicates by negative implication that banks for cooperatives are not entitled to immunity.

Thus, banks for cooperatives are subject to state taxation. The judgment of the Missouri Supreme Court is reversed.



INCOME TAX

John Kupka v. Director of Revenue, Case No. 00-0088 RI, (AHC, 3/9/2001)

John Kupka (Taxpayer) was a resident of Missouri for all of 1998. Taxpayer received a distribution of \$31,751 from his retirement plan held with a trust company and a distribution of \$8,339 from his retirement plan held with a bank. Taxpayer filed

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a 1998 federal income tax return reporting a federal adjusted gross income of \$0. Taxpayer filed a 1998 Missouri individual income tax return reporting zeros. The director issued a notice of deficiency for \$1,610 in tax (plus interest and additions to tax for failure to pay) based on a federal adjusted gross income of \$40,090. Taxpayer argued the director does not have statutory authority to recalculate his federal adjusted gross income.

The Administrative Hearing Commission (AHC) held the director has an affirmative duty not only to examine and correct a return, but also to assess a deficiency if a taxpayer fails to report on the Missouri return the correct amount of federal adjusted gross income. The AHC concluded Taxpayer was subject to Missouri income tax based on federal adjusted gross income of \$40,090. The AHC determined Taxpayer was liable for the tax, interest and additions to tax for failure to pay.



SALES TAX

Wilson's Total Fitness, Inc., v. Director of Revenue, SC82732 (Mo. banc 3/06/2001)

Wilson's Total Fitness, Inc., (Taxpayer), filed a protest payment claiming that its membership dues were not subject to sales tax. Taxpayer offered various activities including weight training, cardiovascular training and basketball, racquetball, swimming and tennis facilities. Taxpayer also facilitated competition by organizing basketball, racquetball and volleyball leagues. Taxpayer argued it was

not a place of amusement pursuant to the Missouri Supreme Court's (Court) ruling in *Columbia Athletic Club v. Director of Revenue*, 961 S.W.2d 806,808 (Mo. banc 1998) because its primary purpose was to improve health. The director argued that the Taxpayer's membership dues were subject to tax pursuant to Section 144.020.1(2), RSMo, because Taxpayer held itself out to the public as a place of amusement. The Administrative Hearing Commission (AHC) ruled that the Taxpayer's membership dues were subject to sales tax because the advertisements established that Taxpayer's primary purpose was to provide recreation.

On appeal the Court affirmed the AHC's decision. Furthermore, the Court overruled the primary purpose test set out in *Columbia Athletic Club* and reinstated the de minimus test previously set forth in *Spudich v. Director of Revenue*, 745 S. W. 2d 677 (Mo. banc 1988). The de minimus test provides that if a business location offers amusement, entertainment, or recreation activities that comprise more than a minimal portion of all activities of the business, the business is required to collect and remit sales tax pursuant to 144.020.1(2), RSMo.



ARTICLE X CASE SUMMARY

Missouri Merchants and Manufacturers Association v. State of Missouri, Nos. SC83199 and SC83200 (Missouri Supreme Court, en banc, 3/9/2001)

This case was filed on behalf of taxpayers seeking additional refunds under the Hancock Amendment (Missouri Constitution, Article X). The taxpayers presented three arguments in their appeal to the Missouri Supreme Court. First, they claimed that the state had incorrectly included the Conservation Sales Tax in the "base year ratio," which is part of the formula used to determine whether the Hancock Amendment's limitation on taxes has been exceeded. The Court rejected this argument and found that the Conservation Sales Tax was properly included in this calculation.

The second argument presented by the taxpayers concerned the effect of tax credits on the calculation of "Total State Revenue," which is the amount that indicates whether the state has exceeded the revenue cap imposed by the Hancock Amendment. The taxpayers' argument focused on the constitution's requirement that Total State Revenue "shall exclude the amount of any credits based on actual tax liabilities or the imputed tax components of rental payments, but shall include the amount of any credits not related to actual tax liabilities." The Court ruled that this language means that tax credits that exceed tax liability and are refunded to a taxpayer should be included in Total State Revenue. The Court remanded the case to the Cole County Circuit Court to determine the amount of those credits and to decide whether additional Hancock refunds should be paid as a result of this issue.

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The taxpayers' third argument concerned the calculation of their individual Hancock refund checks. These refunds are based on each taxpayer's income tax liability. When a taxpayer reduces his liability by claiming tax credits, the refund is reduced. The taxpayers asserted that tax credits are simply another way of paying taxes, and should not reduce their Hancock refunds. The Court disagreed, explaining that Hancock refunds are not available in connection with "taxes not actually paid."

The Cole County Circuit Court will now decide whether any additional refunds should be paid as a result of the Court's ruling on the second issue, and the amount of any such refunds.



INCOME TAX

Frederick J. Peet v.

Director of Revenue, No. 00-1330 RI (AHC, 2/7/2001)

Frederick J. Peet (Taxpayer) filed income tax returns for 1995 and 1996. He requested and received refunds for overpayment of tax. Subsequently, Taxpayer filed amended returns reporting changes in federal adjusted gross income and submitted a payment. The department recomputed the tax and imposed interest. Taxpayer disputed the application of his payment.

The Administrative Hearing Commission held interest applies as a matter of law on any amount of tax not paid on or before the last date prescribed for payment. The application of payments was upheld.



INCOME TAX

John G. Feld v. Director of Revenue, WD 59281 (Missouri Court of Appeals, Western District 3/20/2001) Per Curium Order not published pursuant to Rule 84.16(b).

John G. Feld (Taxpayer) appealed the decision of the Administrative Hearing Commission (AHC), which found that Taxpayer was a resident of Missouri in 1993 and that payments he received for contract services were taxable income. On appeal, Taxpayer claimed he was not afforded due process because he did not have an informal hearing with the director under Section 143.631, RSMo. The Missouri Court of Appeals (Court) ruled that the statute provides that the Taxpayer may request such a hearing, which this Taxpayer did not do, and therefore he was not denied due process.

Taxpayer claimed that the AHC improperly admitted evidence of the IRS Form 4549-A. The Court found that the evidence did not prejudice Taxpayer since his own testimony and W-2s were sufficient for the AHC to rule that the income was subject to Missouri income tax. The decision of the AHC was affirmed.



INCOME TAX

Joseph A. & Marylyn C. Cricchio v. Director of Revenue, Case No. 00-1317 RI (AHC, 3/28/2001)

Joseph A. and Marylyn C. Cricchio (Taxpayers) filed a complaint challenging a Final Decision assessing income tax deficiencies for 1988, 1989 and

1990 tax years. Taxpayers asserted that the director violated a three-year period of limitations.

The IRS adjusted Taxpayers' federal adjusted gross income. Taxpayers did not report the changes to the department. Taxpayers are required to report any change in their federal adjusted gross income within 90 days of the final determination of that change to the director. The director issued a Notice of Deficiency to the Taxpayers' within one year after the director became aware of the determination of the change in federal adjusted gross income pursuant to Section 143.711.4, RSMo. The Administrative Hearing Commission (AHC) ruled that the director issued the Notice of Deficiency within the statute of limitations.

Taxpayers contended the statute of limitation in Section 143.951 applied. The AHC ruled that Section 143.951, RSMo, applies only to criminal prosecutions.

Taxpayers also requested another hearing to prove that the United States Tax Court erred in its decision. The AHC ruled that the Taxpayers had been given adequate time to prepare for the hearing.

The AHC ruled that Taxpayers owed tax, additions and interest for all tax years before the AHC.



SALES TAX

Springfield Police Officers Association v. Director of Revenue Case No. 003299 RV

The Springfield Police Officers Association (Taxpayer) requested an exemption letter as a charitable organization pur-

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suant to Section 144.030.2(19), RSMo. The department declined to issue the exemption letter on the basis that (1) the IRS had classified Taxpayer as a labor union for federal income tax purposes, and (2) based upon the information provided by Taxpayer, only a small percentage of its income was actually

used for charitable purposes. Taxpayer appealed the denial. At the hearing, the department presented evidence that the true function of Taxpayer's organization was to act as a conduit for providing insurance benefits to its police officer-members, who were ineligible for insurance under Springfield's city insur-

ance plan. The Administrative Hearing Commission ruled that the exemption letter should be granted and based its decision on a finding that Taxpayer met the qualifications for exemption as a "fraternal" organization under Section 144.030.2(20).

PLEASE TAKE NOTE

Effective January 1, 2002, the *Tax Bulletin* will no longer be available in printed copy. The department will maintain and subscribers of the tax practitioner service will be notified of the informational newsletter three times a year. The informational newsletter will be available on the Missouri Department of Revenue's web site.

The tax practitioner service is intended to be a method for the department to distribute tax information to tax professionals in an efficient, cost effective and timely manner. As a subscriber to the tax practitioner service, you can expect bul-

letins about processing status and clarifications to instructions and forms as necessary along with this information newsletter.

If you are interested in subscribing please follow these instructions:

Send an email message to **majordomo@mail.state.mo.us** and in the body of the message type "subscribe tax-practitioners" with the subject line blank. When you send the message, you should receive subscription confirmation with 24 hours.

IMPORTANT PRODUCT INFORMATION

The Missouri Department of Revenue has discontinued the printing of the tax law books and the MO Package X; however, the department is providing alternative methods for you to obtain the forms that you need.

You may obtain the Missouri tax forms from the department's web site at **www.dor.state.mo.us/tax/forms/** or by ordering on the Form MO-33. Missouri statutes may be obtained on the Missouri State Government web site at **www.moga.state.mo.us/homestat.htm**, by writing the Revisor of Statutes, State Capitol Building, Room 117A, Jefferson City, Missouri 65101-1556, or calling (573) 526-1288.

Tax Policy continued from page 3
credit must exceed the tax liability for the year the property is placed in service otherwise, no carryback is available. To enforce this provision of the statute, the Missouri Department of

Revenue will apply the credit to the tax liability for the year the property is placed in service

before allowing the credit carryback to prior years. This means the taxpayer's income tax return for the year the property is placed in service must be filed before the taxpayer may claim any refund based on amended returns carrying back the credit to prior years.

This policy will be effective January 1, 2002. Its implementa-

tion is being delayed for the benefit of taxpayers who previously earned or purchased Historic Preservation Credits, but were not apprised of the Department of Revenue's administration of the credits.

Rules Take Effect

by Office of Legislation and Regulations, (573) 751-2110

The Sales and Use Tax Regulation Group (SURG) was charged with rewriting the sales and use tax regulations. As a result of SURG's work, the department has recently proposed the following new sales and use tax regulations:

12 CSR 10-103.370 — Manufactured Homes. Sections 144.044 and 700.010, RSMo, create a partial tax exemption for new manufactured homes and an exclusion for qualifying used manufactured homes. This rule interprets the tax law as it applies to the sale of manufactured homes. This rule also identifies charges included as part of the retail sale price of the manufactured home.

Proposed rule published in the *Code of State Regulations*, effective 07/30/01.

12 CSR 10-110.300 — Common Carriers. Sections 144.030.2(3), (10), (11), (20) and (30), RSMo, exempt from taxation certain materials, parts and equipment used by common carriers. This rule explains what qualifies for the exemptions.

Proposed rule published in the *Code of State Regulations*, effective 08/30/01.

SURG has also reviewed the existing regulations to determine which of them can be rescinded in light of the new regulations. Based on these recommendations, the following sales and use tax regulations are being rescinded by the department.

The following proposed rescissions will be published in the *Code of State Regulations*, effective 09/30/01.

12 CSR 10-3.020 — Finance Charges

12 CSR 10-3.022 — Cash and Trade

Discounts

12 CSR 10-3.023 — Rebates

12 CSR 10-3.024 — Returned Goods

12 CSR 10-3.060 — Memorial Stones

12 CSR 10-3.066 — Delivery, Freight and

Transportation Charges — Sales Tax

12 CSR 10-3.076 — Used Car Dealers

12 CSR 10-3.086 — Bookbinders,

Papercutters, etc.

12 CSR 10-3.092 — Painters

12 CSR 10-3.094 — Interior or Exterior

Decorators

12 CSR 10-3.096 — Janitorial Service

12 CSR 10-3.100 — Barber & Beauty Shops

12 CSR 10-3.122 — Consideration Other

Than Money, Except for Trade-Ins

12 CSR 10-3.128 — Salvage Companies

12 CSR 10-3.136 — Consideration Other Than Money

12 CSR 10-3.138 — Consideration Less Than Fair Market Value

12 CSR 10-3.160 — Funeral Receipts

12 CSR 10-3.164 — Installments Sales & Repossessions

12 CSR 10-3.174 — Stolen or Destroyed Property

12 CSR 10-3.200 — Wrapping Materials

12 CSR 10-3.202 — Pallets

12 CSR 10-3.206 — Bottle Caps & Crowns

12 CSR 10-3.208 — Crates & Cartons

12 CSR 10-3.244 — Trade-Ins

12 CSR 10-3.452 — Mailing of Returns

12 CSR 10-3.454 — No Return, No Excuse—Return Required Even if No Sales Made

12 CSR 10-3.456 — Calendar Quarter Defined

12 CSR 10-3.460 — Return Required

12 CSR 10-3.462 — Annual Filing

12 CSR 10-3.464 — Tax Includes

12 CSR 10-3.494 — Allowance for Defective Merchandise

12 CSR 10-3.890 — Area Betterment, Tourism or Marketing Program Fees to Be Included as Taxable Gross Receipts

12 CSR 10-4.270 — Allowance for Defective Merchandise

12 CSR 10-5.005 — Date of Delivery Determines Applicability

12 CSR 10-5.025 — Location of Machine Determines

12 CSR 10-5.505 — Date of Delivery Determines Applicability

12 CSR 10-5.515 — Layaways

The following proposed rescissions will be published in the *Code of State Regulations*, effective 10/30/01.

12 CSR 10-3.280 — Sale of Agricultural Products by the Producer

12 CSR 10-3.882 — Accrual Basis Reporting

If you would like to receive a copy of any of the rules listed above, please contact the Secretary of State, Administrative Rules Division, P.O. Box 1767, Jefferson City, MO 65102 or telephone (573) 751-4015.

Legislative Update

by Office of Legislation and Regulations, (573) 751-2110

A number of bills relating to taxation passed during the recent legislative session and were signed into law. The following is a synopsis of those bills.

HB 129 — EXAMINATION OF TAXPAYER RECORDS — This legislation prevents state and local governments from entering into contingency fee contracts for examination of a taxpayer's records if the compensation is related to the amount of tax, interest, court cost or penalty assessed or collected. Signed 06/08/01.

HB 133 — ECONOMIC DEVELOPMENT TAX CREDITS — This legislation modifies the provisions of the current economic development tax credit by expanding the definition of "allowable cost" to include demolition and reconstruction costs when demolition occurs as part of an approved redevelopment plan. The definition of "eligible project" is also expanded to include property adjacent to abandoned or underutilized property.

The Director of the Department of Economic Development, with approval from the Director of the Department of Natural Resources, is allowed to grant a demolition tax credit for up to 100% of the demolition cost if voluntary remediation is occurring and demolition occurs as a part of an approved redevelopment plan. Signed 06/29/01.

HB 202 — SALES TAX: TRANSPORTATION DEVELOPMENT DISTRICT — This legislation modifies the provisions of imposing sales tax for a transportation development district. The sales tax may now be imposed in increments of one-eighth of one percent up to a maximum of one percent. Signed 06/26/01.

HB 241 — ESTATE TAX — This legislation revises the principal and income act applicable to trusts and estates and provides for the repeal of the Missouri estate tax upon repeal of the federal estate tax. Signed 07/06/01.

HB 242 — TOURISM TAX — This legislation authorizes the cities of Clarksville, Louisiana, Parkville, Ste. Genevieve and the county of Ste. Genevieve to levy a tourism tax on charges for hotel and motel rooms and docking facilities which rent slips for recreational boating. The levy must be at least 2%, but not more than 5%, and must be approved by the voters of the respective cities and county. Signed 06/26/01.

HB 321 — KANSAS CITY TRANSPORTATION SALES TAX — This legislation extends the sunset of the Kansas City transportation sales tax from December 31, 2001, to December 31, 2003. Signed 06/26/01.

HB 381 — GRAY MARKET CIGARETTES — This legislation makes changes to statutes concerning the sale of tobacco products. The bill:

- Prohibits any refund to a cigarette retailer of sales tax illegally or erroneously overcharged on the amount of any cigarette excise tax included in the retail price of cigarettes unless the overcharge is refunded to the person who paid the tax. If the illegal or erroneous overcharge on the amount of any cigarette excise tax is not refunded to the person who paid the tax, it will be retained by the director of the Department of Revenue;
- Bans the sale and distribution of "gray market cigarettes." Gray market cigarettes are cigarettes that are packaged for sale outside the United States and may not contain required health warnings and ingredient lists. These cigarettes may also be distributed under names and packages similar to cigarettes manufactured for sale in the United States. Persons are prohibited from affixing any stamp or meter impressions to gray market cigarettes. The bill allows the director to revoke or suspend the license of a wholesaler who violates this law. In addition, the director may impose a civil penalty not greater than 500% of the retail value of the cigarettes involved or \$5,000. Gray market cigarettes sold or distributed in violation of this law are considered contraband and subject to seizure and forfeiture. In addition, violations are subject to remedies or penalties available for a violation of unlawful trade practices. This law is to be enforced by the director through the State Highway Patrol and all local police authorities. The Attorney General has concurrent power with the prosecuting attorneys of the state to enforce this law. The gray market provisions of the bill will take effect February 1, 2002;
- Gives the Division of Liquor Control authority to enforce laws related to the control and sale of tobacco and requires the division to submit

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an annual report on the effectiveness of cigarette control laws to the General Assembly;

- Requires vendors to deny the sale of tobacco products to persons believed to be less than 18 years of age. Internet and mail sales of tobacco to anyone under the age of 18 are also prohibited. There is a penalty for any such sale;
- Requires vending machines, by January 1, 2001, to be equipped with a device that disables them until unlocked by a sales person. Vending machines located in areas where patrons must be over the age of 18 or in places not generally accessible to the general public are exempted from this requirement. The Division of Liquor Control may suspend the registration of any person in violation of this provision;
- Requires persons who sell cigarettes to have a retail sales tax license and to be registered with the Department of Revenue to sell tobacco products in the state. Persons may register to sell tobacco products through the Internet or the sales tax license application;
- Requires the Department of Revenue to make available to the Division of Liquor Control and the Department of Mental Health a list of persons registered to sell tobacco products in the state.
- Authorizes the Division of Liquor Control to inspect stores and tobacco outlets for compliance of all laws on tobacco sales to minors. Signed 7/13/01.

HB 453 — PETROLEUM STORAGE TANK INSURANCE FUND — This legislation provides a procedure for filing a claim for a refund of an erroneously paid surcharge on petroleum products and eliminates the Department of Revenue from being subject to suit and liable for attorneys fees resulting in a denial of a refund by the Petroleum Storage Tank Board. This legislation extends the expiration of the Petroleum Storage Tank Insurance Fund and allows the Petroleum Storage Insurance Tank Insurance Fund Board to increase or decrease transport load fees, not to exceed \$60.

It establishes a committee within the Department of Economic Development to advise state agencies on issues related to electronic commerce. The 13 members of the committee include the directors of the departments of Economic Development, Revenue, and Labor and Industrial Relations; the Secretary of State; the Chief Information Officer of the Office of Technology; seven members of the business commu-

nity; and one member of the general public appointed by the Director of the Department of Economic Development. Members serve two-year terms without compensation.

It also broadens the class of employees that can be counted to fulfill residency requirements for enterprise zone tax credits and exemptions for new motorcycle or bicycle manufacturing facilities. Signed 07/12/01.

HB 590 — DISABLED ACCESS TAX CREDIT — This legislation requires the Department of Economic Development and the Department of Revenue to jointly administer the disabled access tax credit. Signed 07/10/01.

HB 738 — TAX CREDITS — This legislation modifies numerous banking provisions. It makes S corp banks eligible for certain tax credits and establishes that in the event the franchise tax is repealed the S corp bank will still receive the franchise tax credit. It also requires a second lien holder to have a motor vehicle title before a lien can be placed and allows the premium tax examination fees deduction to be carried forward. Signed 07/12/01.

HB 816 — SALES TAX REFUNDS — Currently, taxpayers applying for a sales tax refund are required to notarize the refund application. This legislation removes the notary requirement and replaces it with a signature requirement. Signed 06/08/01.

HB 825 — SALES TAX: GOLD BULLION AND INVESTMENT COINS — Senate Bill 896, which authorized a sales tax exemption for gold bullion and coins, was passed last year by the General Assembly with incorrect statute references. This legislation corrects those statute references in Section 144.815, RSMo. Signed 06/08/01.

HB 933 — SALES TAX: MOTOR VEHICLES — This legislation clarifies that sales tax, not use tax, applies to the sale and lease of motor vehicles and motorcycles. Signed 06/26/01.

SB 186 — FINANCIAL INSTITUTIONS — This legislation modifies numerous banking provisions. It makes S corp banks eligible for certain tax credits and establishes that in the event the franchise tax is repealed, S corp banks will still receive the franchise tax credit. It also requires a second lien holder to have a motor vehicle title before a lien can be placed. Signed 07/12/01.

SB 203 — METROPOLITAN PARK AND RECREATION DISTRICT SALES TAX — This legislation exempts sales tax on food purchases from a

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metropolitan park and recreation district tax. Signed 06/29/01.

SB 234 — SALES TAX: TELECOMMUNICATION SERVICES — This legislation extends the existing sales tax exemption for telecommunications that are separately stated on a customers bill to include such services if they are separately stated on records maintained by the seller in the ordinary course of business. Signed 07/12/01.

SB 323 & 230 — LOCAL TAXES — This legislation authorizes certain political subdivisions to enact a sales tax for specific purposes.

- **BUCHANAN MUSEUM AND TOURISM TAX** — This act authorizes the county commission of Buchanan County (St. Joseph), to put to county-wide vote a sales tax for promotion of museums, cultural tourism, festivals and the arts. The tax is in addition to any tourism tax imposed by Buchanan County voters. If the new tax is approved by the voters, the county commission shall appoint a six-member board to administer and distribute the funds. Recipients of the sales tax funds must be IRS 501(C)(3) corporations. Similar to the existing Buchanan County tourism tax, the tax will be collected by the Director of Revenue.
- **MARYLAND HEIGHTS HOTEL/MOTEL SALES TAX** — Expands current law to authorize the city of Maryland Heights to impose an additional tax, upon voter approval, on hotel and motel rooms located in the city.
- **5% TRANSIENT TAX** — Expands current law to authorize the city of Maryland Heights and Platte County to impose up to a 5 percent transient tax, upon voter approval.
- **CALDWELL COUNTY ECONOMIC DEVELOPMENT TAX** — Expands current law to authorize Caldwell County to impose a sales tax, upon voter approval, for economic development purpose.
- **EXPANDS HOTEL/MOTEL SALES TAX** — Adds the cities of Clarksville, Cuba, Louisiana, Parkville, and Newton County to those cities and counties authorized to submit to the voters a hotel/motel tax of between two percent and five percent for funding the promotion of tourism.
- **COMMUNITY CHILDREN'S SERVICES** — Allows St. Louis City, St. Louis County, St. Charles County, Jefferson County, Franklin

County, Warren County and Lincoln County to impose a sales tax up to one quarter of a cent, for community services for children up to age 19. Current law allows only St. Charles County to enact this sales tax. The moneys collected from this sales tax will be deposited into the county's Community Children's Service Fund and administered by the Board of Directors. The act allows St. Louis City, St. Louis County, St. Charles County, Jefferson County, Franklin County, Warren County, and Lincoln County to have their Community Mental Health Boards of Trustees oversee the Community Children's Services Fund, not separate Boards of Directors. Current law allows only St. Louis City and St. Charles County to have Community Mental Health Boards of Trustees oversee the fund.

- **ECONOMIC DEVELOPMENT SALES TAX** — Allows the governing bodies of counties containing at least 700 miles and not more than 900 miles of shoreline of a Corps of Engineers lake, or any county that contains or borders part of a lake having at least 100 miles of shoreline, to order an election for a sales tax, not to exceed one and one-half percent, for economic development within the approving county. This act will affect Taney, Stone, Barry, and Ozark Counties and the Lake of the Ozarks. The revenue from the tax will be placed in a special trust fund. The governing body of the county will administer the moneys in the fund in the following manner: 1/3 of the revenue collected a year for tourism, 1/3 of the revenue collected a year for water quality and 1/3 of the revenue collected a year for infrastructure. The act provides for the Department of Revenue to collect and distribute the retail sales tax to the appropriate county treasurers. All expenditures from the fund are by appropriation enacted by the governing body of the county. This act describes the various programs that the money in the fund may be spent on. The act contains a mechanism to repeal the sales tax if at least 20% of voters of the county that voted in the last gubernatorial election submit a petition to repeal the tax, followed by the whole county voting on the issue.
- **TOURISM COMMUNITY ENHANCEMENT DISTRICTS** — Allows Barry, Taney,

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Stone and Ozark Counties to create Tourism Community Enhancement Districts which may provide for a sales tax to fund school districts, senior or community activities and tourism within the District. This act provides for the collection of the sales tax by the Department of Revenue at a cost of one percent of the total sales tax collected for a district. It also includes language that allows the board to enter into an agreement with the county or city clerk for the collection of the sales tax at a cost of one percent of the total sales tax collected within the district.

- **BRANSON SALES TAX** — Allows the city of Branson to impose the current tourism tax on items that cost less than \$1.00.
- **PLATTE COUNTY \$1.00 CAR RENTAL FEE** — Authorizes Platte County to impose a \$1.00 fee upon short-term, less than one

month, car rentals. The renter of the vehicle may indicate on the rental contract that a \$1.00 fee was paid. Revenue collected from the \$1.00 fee will be used for tourism purposes. Signed 07/12/01.

SB 352 — SALES TAX: CAPITAL IMPROVEMENTS — This legislation defines capital improvements and other terms relating to the capital improvements sales tax for certain municipalities. Signed 07/10/01.

SB 462 — NEW GENERATION COOPERATIVE INCENTIVE TAX CREDIT — This legislation modifies the eligibility provisions of the New Generation Cooperative Incentive Tax Credit and changes the allocation of the tax credits between small capital costs projects, employee qualified capital projects and large capital projects. Signed 06/28/01.

One Stop Shop For Researching Sales/Use Tax Issues is Under Construction

by Chris Laughlin, (573) 751-4816

In an effort to provide our employees and therefore our customers, with the best information available on sales/use tax issues in a timely manner, the department is developing a "one-stop shop" database for sales/use tax issues. With an overabundance of information on issues, the department's goal is to manage its knowledge base to provide meaningful and timely information. Members of the DOR Leadership Development Program chartered a Database Project Team to reengineer and simplify the process for researching sales/use tax issues.

The team's mission is to develop and maintain an online one-stop shop for all department employees to research sales and use tax issues. The recommen-

dation to create an online database was approved in April. Research material is currently being compiled while our technical support staff is constructing the database. Statutes, regulations, letter rulings, court cases, case summaries, Auditor's Training Manual, internal work products, Industry Guidelines, and *Tax Bulletin* articles will be included in the database in a searchable, user-friendly format. Information will be available within minutes for the department's employees. This will allow employees the ability to provide taxpayers with quick, complete, and consistent information.

Phase II of this project will make the database available to taxpayers through our web site

in the same user-friendly searchable format. This will provide taxpayers with meaningful and timely information in minutes. Portions of the database containing confidential or other private information will not be available for research.

The database will be maintained and updated by Field Audit. If you have any feedback or questions regarding the database, please send an e-mail message to **Fab_admin@mail.dor.state.mo.us** or call (573) 751-3736.

Tax Calendar

Due Dates for September – December 2001

September

- 4 Quarterly Insurance Tax Payment
Motor Fuel Suppliers Report
- 6 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 12 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 17 Estimated Tax Declarations for
Individuals
Declaration of Estimated for Calendar
Year Corporations
Monthly Withholding Returns
Cigarette Tax Credit Account and
Return
Other Tobacco Products Monthly
Report
Calendar Year Cooperatives with
Extension
- 19 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 20 Monthly Sales/Use Tax Returns
Cigarette Tax Cash Accounts Return
- 26 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment

October

- 1 Motor Fuel/Distributor Reports
- 2 Motor Fuel Suppliers Report
- 3 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 11 Quarter-Monthly Sales Tax

- Quarter-Monthly Withholding
Payment
- 15 Corporation Income Tax with
Automatic Extension
Cigarette Tax Credit Account and
Return
Other Tobacco Products
Monthly Reports
- 18 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 22 Cigarette Tax Cash Accounts Return
- 25 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 30 Quarterly Insurance Tax Payments
- 31 Monthly Sales/Use Tax Returns
Quarterly Sales/Use Tax Returns
Quarterly Withholding Returns
Monthly Withholding Returns
Motor Fuel/Distributor Reports
Tire Fee

November

- 1 Motor Fuel Reports
- 5 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding Payment
- 13 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding Payment
- 15 Monthly Withholding Returns
Cigarette Tax Credit Account and
Return
Other Tobacco Products Monthly
Reports
Calendar Year Trusts with an
Automatic Extension to file 2001

- Form MO-1120
- 20 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
Monthly Sales/Use Tax Returns
Cigarette Tax Cash Accounts Return
- 27 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 30 Motor Fuel/Distributor Reports

December

- 3 Quarterly Insurance Tax Payment
Motor Fuel Suppliers Report
- 5 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 12 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 17 Corporation Income Tax
Monthly Withholding Returns
Cigarette Tax Credit Account and
Return
Other Tobacco Products
Monthly Reports
- 19 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 20 Monthly Sales/Use Tax Returns
Quarterly Sales/Use Tax Returns
- 27 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 31 Motor Fuel/Distributor Reports

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Tax Bulletin
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